

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

MICHAEL L. POTTS, D.D.S., and)	Case No.S:03-CV-00348 JAM-DAD
THE AMERICAN ACADEMY OF IMPLANT)	
DENTISTRY,)	<u>PRETRIAL CONFERENCE ORDER</u>
)	
Plaintiffs,)	
)	
v.)	
)	
BRIAN STIGER, in his Official)	
Capacity as Director, California)	
Department of Consumer Affairs,)	
et al.,)	
)	
Defendants.)	
)	

Pursuant to court order, a Pretrial Conference was held on September 9, 2010 before Judge John Mendez. Frank R. Recker, Kenneth C. Mennemeier and Sarah Fischer appeared as counsel for plaintiffs; Jeffrey M. Phillips appeared as counsel for defendants. After hearing, the court makes the following findings and orders:

I. JURISDICTION/VENUE

Jurisdiction is predicated upon 28 U.S.C. §§ 1331 and 1343, and has previously been found to be proper by order of this court, as has venue. Those orders are confirmed.

II. JURY/NON-JURY

Both parties have requested a court trial. The Court grants this request.

III. UNDISPUTED FACTS

1. Plaintiff Michael L. Potts, D.D.S. ("Potts") has been a California-licensed dentist in good standing since 1975 practicing general dentistry.

2. Potts performs the following dental work on patients: endodontics, cosmetic dentistry, crowns, bridges, implants, oral surgery, periodontal surgery, and full mouth restorations.

3. Potts is a credentialed member of Plaintiff American Academy of Implant Dentistry ("AAID").

4. Potts holds the credentials of "Fellow" awarded by the AAID, and is a board certified "Diplomate" awarded by the American Board of Oral Implantology/Implant Dentistry ("ABOI/ID").

5. Potts became an "Associate Fellow" of AAID in approximately 1979-80.

6. In 1985, Potts earned his "Fellow" credential from AAID.

7. Potts is a past President of the Western District of the AAID.

8. Potts is a member of the American Dental Association, the California Dental Association and the Ventura County Dental Society.

9. Potts was awarded a Certificate of Recognition and the Medical Professional Award for 2003 by the California State Assembly.

10. Potts holds a "Fellow" credential from the International Congress of Oral Implantology (I.C.O.I.).

1 11. Under California Business and Professions Code Section
2 651(h)(5)(A), Potts is not permitted to advertise his AAID and/or
3 ABOI/ID credentials to the public.

4 12. Potts has advertised his AAID and ABOI/ID credentials
5 consistent with the Court's decision in *Bingham v. Hamilton*, 100
6 F.Supp. 2d 1233 (E.D. Cal. 2000) ("*Bingham II*"), and seeks to
7 continue to do so.

8 13. AAID is a national dental organization established in
9 1951 and is the oldest dental implant organization in the United
10 States.

11 14. AAID Headquarters Office is located in the American
12 Dental Association ("ADA") Building located at 211 E. Chicago
13 Avenue in Chicago, Illinois.

14 15. J. Vincent Shuck ("Shuck") is the former Executive
15 Director of AAID; the current Executive Director is Sharon Bennett
16 ("Bennett").

17 16. Shuck served as Executive Director of AAID from 1992 to
18 2008, prior to which time he was employed by the ADA for 19 years.

19 17. In their capacity as Executive Director, Shuck and now
20 Bennett are responsible for overseeing the implementation of all
21 policies adopted by the Board of Trustees of AAID and are further
22 responsible for maintaining accurate records of all AAID business,
23 including the granting of credentials in implant dentistry.

24 18. AAID also sponsors and supports the ABOI/ID, its national
25 certifying Board.

26 19. ABOI/ID was created in 1989 by AAID and provides
27 sponsorship, staff space, and file space to ABOI/ID.
28

1 20. In 1993, the Council on Dental Education recognized AAID
2 as the sponsoring organization for the non-specialty area of
3 implant dentistry. The ADA has not granted this recognition to any
4 other dental implant organization.

5 21. Implant dentistry consists of the placing of devices for
6 attaching artificial replacement teeth to the same bones to which
7 natural teeth are anchored.

8 22. Implants may be inserted into the bone, functioning like
9 an artificial tooth root, or may be placed directly against the
10 bone to support a dental prosthesis.

11 23. In implant dentistry there are basically two components:
12 the first is the surgical component—the anchoring of the implant or
13 artificial root to the bone; and once the implant site has healed,
14 the second step is the placement of the prosthodontic component,
15 which is the artificial tooth structure.

16 24. Implant dentistry is a dental procedure that may be
17 performed in California by a general dentist or specialist.

18 25. A primary purpose of AAID is enhancement of dental
19 professionals' knowledge, skill and expertise in implant dentistry.
20 Accordingly, AAID encourages its members' attainment of
21 "credentialed" status from AAID (the credential of Associate Fellow
22 and/or Fellow) and "Diplomate" status from ABOI/ID.

23 26. AAID grants the credentials of "Fellow" and "Associate
24 Fellow" to member dentists who have fulfilled certain educational,
25 experiential and examination requirements.

26 27. AAID awards "Fellow" credentials based on the educational
27 requirement of completing at least 100 hours of continuing
28 education in implant dentistry in addition to the 300 hours

1 required for Associate Fellow membership. Each credential has its
2 own predicate requirements for qualification.

3 28. ABOI/ID issues a Diplomate certificate (also referred to
4 as "Board Certification") in the area of implant dentistry, which
5 is not an ADA recognized specialty area of dental practice.

6 29. AAID and ABOI/ID maintain the following websites:
7 www.aaid.com and www.aboi.org. These websites list the
8 credentialing requirements.

9 30. No dentist can obtain a credential from AAID or ABOI/ID
10 by simply paying a fee.

11 31. The continuing education courses which apply toward AAID
12 and ABOI/ID credentials can be taken over an unlimited period of
13 time.

14 32. Neither AAID nor ABOI/ID retain any information regarding
15 the continuing education courses listed on the credential
16 applications after one year.

17 33. Currently, there are nine areas of dental practice
18 recognized by the ADA as specialty areas of practice: Oral and
19 Maxillofacial Surgery, Orthodontics, Oral Pathology, Public Health
20 Dentistry, Oral and Maxillofacial Radiology, Pediatric Dentistry,
21 Periodontology, Prosthodontics, and Endodontics.

22 34. These accredited specialty educational programs are
23 formal post-doctoral programs that are of at least two years in
24 length. All of these specialty educational programs are full-time
25 programs. These full-time programs may allow some students to
26 enroll on a part-time basis if certain requirements are met.

27 35. There are multiple areas of dentistry that are not
28 recognized as specialty areas of dental practice by the ADA, and

1 there are multiple national dental organizations that issue
2 credentials in non-specialty areas of dentistry. Examples include:
3 implant dentistry, cosmetic dentistry, forensic dentistry, general
4 dentistry, orofacial pain, oral medicine, and laser dentistry.

5 36. The determination of whether an area of dental practice
6 is deemed a specialty area of dentistry is made by the ADA House of
7 Delegates, a governing political body largely comprised of
8 practicing U.S. dentists.

9 37. CoDA, under the auspices of the ADA, is the entity that
10 sets the accreditation standards for dental schools, and advanced
11 specialty education programs for dentistry in the United States.

12 38. CoDA's accreditation review process is based on national
13 standards that assess the quality of dental education programs that
14 include: outcome assessment, administration, curriculum, faculty,
15 financial support and physical facilities.

16 39. CoDA meets in January and July of each year to review
17 accreditation reports and award accreditation statuses to programs.

18 40. CoDA assigns review committees composed of experts in
19 their respective fields, chaired by a Commissioner, who perform
20 site visit reports, progress reports, and other reports to the
21 various discipline review committees, prior to action on
22 accreditation matters.

23 41. "When all other avenues of due process have been
24 explored, any program has the right to appeal an adverse
25 accreditation decision (i.e., denial or withdrawal of
26 accreditation) to [CoDA's] Appeal Board."

27 42. The ADA's Dental Specialty Recognition Process allows
28 applicant organizations the right to respond to the denial of

1 specialty recognition, the right to specially appear before CDEL
2 after denial of specialty recognition, and the right for the ADA
3 House of Delegates to review CDEL's denial recommendation.

4 43. Several post-graduate programs in ADA-recognized
5 specialties allow some students to enroll on a part-time basis.

6 44. Potts is not a Diplomate of any ADA-recognized specialty
7 board, and has not completed any CoDA-accredited or California
8 Dental Board-recognized advanced educational dental program.

9 45. Potts is not a "specialist" in implant dentistry.

10 46. Plaintiffs do not seek to advertise that they are
11 "specialists" in implant dentistry or that their board
12 certification is an ADA-recognized "specialty" area.

13 47. The California Dental Board issues only one dental
14 license, and therefore all licensed California dentists possess the
15 same "general" dental license.

16 48. Dentists may earn credentials from bona fide (as defined
17 under Section 651(h)(5)(A)) National Dental Organizations in areas
18 of dental practice that are not one of the nine ADA recognized
19 "specialty" areas of dental practice.

20 49. A California dentist must complete 50 hours of continuing
21 education in any area of dental practice every two years in order
22 to maintain and renew his or her license.

23 50. These 50 hours can include courses in any area of dental
24 practice, both clinical and/or non-clinical, for example, infection
25 control, dental anesthesia and California law.

26 51. Potts used some of his CE courses for both his ABOI/ID
27 credential and his AAID credential.

1 52. All continuing education courses used to meet the
2 educational hours for Dr. Potts AAID credential were also submitted
3 to the Dental Board to satisfy continuing education hours to
4 maintain Dr. Potts' dental license.

5 53. One of the patient rights set forth by the CDA is: "You
6 have a right to know the education and training of your dentist and
7 the dental team."

8 54. On January 29, 2002, the Assembly passed AB 1026 on to
9 the California Senate.

10 55. After amendments to AB 1026 were made in the various
11 committees, AB 1026 was heard by the Senate Committee on Business
12 and Professions on April 8, 2002.

13 56. AB 1026 passed the Senate on August 14, 2002 and was
14 returned to the Assembly. On August 19, 2002, the Assembly
15 concurred in the Senate amendments.

16 57. As reflected in the Legislative Counsel's Digest
17 preceding the amendment at issue: "This bill would also prohibit a
18 dentist from representing to the public or advertising
19 accreditation ... by a board not meeting the above requirements
20 unless the dentist has attained membership in or been credentialed
21 by an accrediting organization recognized by the board as a bona
22 fide organization The bill would set forth membership or
23 credentialing requirements that an organization must have in order
24 to be recognized a bona fide organization."

25 58. On September 3, 2002, AB1026 was enacted as new
26 California Business and Professions Code Section 651(h)(5)(A).

27 59. Under current California law, Potts is not permitted to
28 advertise his AAID and/or ABOI/ID credentials to the public because

1 these credentials were not issued by a "bona fide" credentialing
2 organization, as that term is defined by Section 651(h) (5) (A).

3 60. Neither AAID nor ABOI/ID comply with the provisions of
4 Section 651 (h) (5) (A) (ii), since their credentials may be issued
5 without the requirement that the applicant complete "a formal,
6 full-time advanced education program that is affiliated with or
7 sponsored by a university based dental school and is beyond the
8 dental degree at a graduate or postgraduate level."

9 61. The California Dental Board may enforce the Code
10 provisions that apply to dentists, as well as to enforce the Dental
11 Practice Act and to investigate dentists relating to the
12 implementation and enforcement of the provisions of Section 651 of
13 the Code.

14 62. On February 25, 2003, Potts and AAID commenced this
15 lawsuit challenging Section 651(h) (5) (A).

16 **The parties are ordered to meet and confer regarding**
17 **additional undisputed facts proposed in the joint pretrial**
18 **statement. The parties shall submit any additional undisputed**
19 **facts to the Court on or before September 20, 2010.**

20 **IV. DISPUTED FACTUAL ISSUES**

21 **The parties are ordered to meet and confer regarding the**
22 **proposed disputed facts set forth in the joint pretrial statement**
23 **and submit a revised joint set of disputed factual issues on or**
24 **before September 20, 2010.**

25 **V. DISPUTED EVIDENTIARY ISSUES**

26 **Plaintiffs**

27 Plaintiffs anticipate objecting to any evidence, including
28 witnesses and expert disclosures, not timely submitted in

1 accordance with the applicable discovery deadlines. Plaintiffs
2 anticipate addressing these disputes in motions in limine and/or as
3 the need may arise at trial.

4 **Defendants Contend:**

5 1. The facts before the court in the prior actions (*Bingham*
6 *v. Hamilton*, 100 F. Supp. 2d 1233 (E.D. Cal. 2000) and *Potts v.*
7 *Hamilton*, 334 F. Supp. 2d 1206 (E.D. Cal. 2004)) and the findings
8 of these courts are irrelevant and inadmissible. The facts and
9 issues before the Court in these prior cases are different from the
10 facts and issues before this Court. The Ninth Circuit addressed
11 this very same argument, and held that the *Bingham II* case has no
12 binding effect on the present litigation, and specifically stated:
13 "We agree with the district Court that this argument lacks merit.
14 Because the California legislature significantly amended section
15 651(h)(5)(A) in 2002, subsequent to the judgment in *Bingham*,
16 neither the claim nor the issues in the instant litigation are
17 substantially identical to those before the Court in the prior
18 case." (*Potts v. Zettel*, 220 Fed. Appx. 559, 2007 WL 412232 (9th
19 Cir. (Cal. 2007) (rejecting plaintiff's claims of issue preclusion,
20 claim preclusion, and res judicata.)

21 2. It is irrelevant whether the survey and other evidence
22 was not before the California Legislature when it amended section
23 651(h)(5)(A). The Ninth Circuit held that "The survey results were
24 probative of their potential to mislead and were therefore
25 relevant, regardless of whether the legislature had the benefit of
26 the surveys when it amended § 651(h)(5)(A)." *Potts v. Zettel* 220
27 Fed.Appx. 559, 561, 2007 WL 412232 (9th Cir. 2007). This issue has
28 been decided by the Ninth Circuit.

3. The number of AAID members, Fellows, and ABOI/ID Diplomates, which show a relatively small number of credentialed members as compared to the number of regular members, is not probative and thus not relevant to the issue that these credentials are rigorous.

4. The availability of, or difficulty in attending a full-time post-graduate dental education program in Implant Dentistry is irrelevant to First Amendment Analysis. The fact that full-time programs in implant dentistry at a university-based dental school may be far away, only available in large metropolitan areas, require full-time attendance, or are otherwise "inconvenient" or "impossible" for dentists who are currently practicing, is not a relevant factor that this Court can consider in its First Amendment analysis under *Central Hudson v. Public Serv. Comm'n of N.Y.*, 447 U.S. 557 (1980).

VI. RELIEF SOUGHT

Plaintiffs seek the following relief: (1) a declaration that Section 651(h) (5) (A) is unconstitutional on its face; (2) a declaration that Section 651(h) (5) (A) is unconstitutional as applied to Plaintiffs; (3) a permanent injunction prohibiting defendants from implementing the provisions of Section 651(h) (5) (A); and (4) all attorneys' fees and costs incurred in bringing this action.

VII. POINTS OF LAW

Trial briefs shall be E-filed with the court no later than seven (7) days prior to the date of trial, i.e., October 6, 2010. Any points of law not previously argued to the Court should be briefed in the trial briefs.

VIII. ABANDONED ISSUES

Plaintiffs have not abandoned any claims for relief.

IX. WITNESSES

Plaintiff anticipates calling the following witnesses:

(a) Michael L. Potts, D.D.S.: Plaintiff

(b) J. Vincent Schuck: AAID's Executive Director at time of filing Complaint

(c) Dr. Jaime Lozada: Plaintiffs' Expert Witness

(d) J. Scott Armstrong: Plaintiffs' Rebuttal Expert Witness

(e) Lynn Stokes: Plaintiffs' Rebuttal Expert Witness

(f) Richard Scheffler: Plaintiff's Expert Witness

Defendant anticipates calling the following witnesses:

(a) Michael A. Kamins: Defendants' Expert Witness

(b) Dr. Sandra R. Cogan: Defendants' Expert Witness

(c) Dr. Laura Neumann: Defendants' Expert Witness

(d) Elizabeth Snow, former Director of Legislative Affairs, California Dental Association.

(e) Charles J. Goodacre, D.D.S., M.S.D., Dean of Loma Linda University School of Dentistry.

Each party may call a witness designated by the other.

A. No other witnesses will be permitted to testify unless:

(1) The party offering the witness demonstrates that the witness is for the purpose of rebutting evidence which could not be reasonably anticipated at the Pretrial Conference, or

(2) The witness was discovered after the Pretrial Conference and the proffering party makes the showing required in "B" below.

B. Upon the post-Pretrial discovery of witnesses, the

1 attorney shall promptly inform the court and opposing parties of
2 the existence of the unlisted witnesses so that the court may
3 consider at trial whether the witnesses shall be permitted to
4 testify. The evidence will not be permitted unless:

5 (1) The witnesses could not reasonably have been
6 discovered prior to Pretrial;

7 (2) The court and opposing counsel were promptly
8 notified upon discovery of the witnesses;

9 (3) If time permitted, counsel proffered the witnesses
10 for deposition;

11 (4) If time did not permit, a reasonable summary of the
12 witnesses' testimony was provided opposing counsel.

13 X. EXHIBITS, SCHEDULES AND SUMMARIES

14 A. Each party will submit a list of documents of which it
15 wants the Court to take judicial notice. The lists will be
16 attached as an exhibit to the parties' trial briefs.

17 B. Plaintiff intends to introduce the following exhibits:

18 1. Requirements of the AAID and ABOI/ID for Associate
19 Fellow Credential, Fellow Credential, and Diplomate at the time the
20 Complaint was filed (Exhibit B to Complaint).

21 2. Current requirements for Associate Fellow
22 credential, obtained from AAID's website.

23 3. Current requirements Fellow credential, obtained
24 from AAID's website.

25 4. Current requirements for Diplomate or Board
26 Certified credential, obtained from ABOI/ID's website.

27 5. Background information on AB 1026, dated December
28 12, 2001, submitted by legislative staff member Sarah B. Angel

(Exhibit D to Complaint).

6. Undated document entitled "Legislative Proposal-Advertising of Credentials" (Exhibit E to Complaint).

7. January 8, 2002 letter from Elizabeth M. Snow to Assemblymember Thomson (Exhibit F to Complaint).

8. Assembly Committee on Health Analysis of AB 1026 (Exhibit G to Complaint).

9. Assembly Committee on Appropriations Analysis of AB 1026 (Exhibit H to Complaint).

10. Senate Committee on Business and Professions Analysis of AB 1026 (Exhibit I).

11. West's 2002 California Legislative Service for AB 1026 (Exhibit J to Complaint).

12. Legislative History of AB 1026, as submitted as an attachment to the Declaration of Alice Olson in Support of Plaintiffs' Motion for Summary Judgment (Docket no. 62).

C. Defendants have not identified any exhibits which the Court finds to be admissible.

Each party may use an exhibit designated by the other.

A. No other exhibits will be permitted to be introduced unless:

(1) The party proffering the exhibit demonstrates that the exhibit is for the purpose of rebutting evidence which could not be reasonably anticipated at the Pretrial Conference, or

(2) The exhibit was discovered after the Pretrial Conference and the proffering party makes the showing required in paragraph "B," below.

B. Upon the post-Pretrial discovery of exhibits, the

1 attorneys shall promptly inform the court and opposing counsel of
2 the existence of such exhibits so that the court may consider at
3 trial their admissibility. The exhibits will not be received
4 unless the proffering party demonstrates:

5 (1) The exhibits could not reasonably have been
6 discovered prior to Pretrial;

7 (2) The court and counsel were promptly informed of
8 their existence;

9 (3) Counsel forwarded a copy of the exhibit(s) (if
10 physically possible) to opposing counsel. If the exhibit(s) may
11 not be copied, the proffering counsel must show that he has made
12 the exhibit(s) reasonably available for inspection by opposing
13 counsel.

14 As to each exhibit, each party is ordered to exchange copies
15 of the exhibit not later than fourteen (14) days before trial.
16 Each party is then granted five (5) days to file and serve
17 objections to any of the exhibits. In making the objection, the
18 party is to set forth the grounds for the objection. The parties
19 shall pre-mark their respective exhibits in accord with the Court's
20 Pretrial Order. Exhibit stickers may be obtained through the
21 Clerk's Office. An original and one (1) copy of the exhibits shall
22 be presented to Harry Vine, Deputy Courtroom Clerk, at 8:30 a.m. on
23 the date set for trial or at such earlier time as may be agreed
24 upon. Mr. Vine can be contacted at (916) 930-4091 or via e-mail
25 at: hvine@caed.uscourts.gov. As to each exhibit which is not
26 objected to, it shall be marked and may be received into evidence
27 on motion and will require no further foundation. Each exhibit
28 which is objected to will be marked for identification only.

XI. DISCOVERY DOCUMENTS

A. Plaintiffs expect to offer the following discovery documents:

(1) Defendants' Response to Plaintiffs' First Set of Interrogatories to Defendants, dated October 23, 2003.

(2) Defendants' Response to Plaintiffs' First Request for Admissions, dated October 24, 2003.

(3) Excerpts from deposition of Dr. Laura Neumann and cited exhibits.

(4) Excerpts from deposition of Dr. Alan H. Kaye and cited exhibits.

(5) Excerpts from deposition of Michael L. Potts and cited exhibits.

(6) Excerpts from deposition of Jaime L. Lozada and cited exhibits.

(7) Excerpts from deposition of J. Vincent Shuck and cited exhibits.

(8) Excerpts from deposition of J. Scott Armstrong.

(9) Excerpts from deposition of Michael A. Kamins.

(10) Excerpts from deposition of Sandra R. Cogan.

B. Defendants expect to offer the following discovery documents:

(1) Plaintiff Potts' responses to Defendant Gatlin's First Set of Interrogatories.

(2) Plaintiff AAID's responses to Defendant Gatlin's First Set of Interrogatories.

(3) Plaintiff AAID's responses to Defendant Hamilton's First Set of Interrogatories.

1 (4) Plaintiff AAID's Response to Defendant Gatlin's First Set
2 of Request for Production of Documents.

3 (5) Plaintiff AAID's Supplemental Responses to Defendant
4 Gatlin's First Set of Request for Production of Documents.

5 (6) Plaintiff Pott's Supplemental Responses to Defendant
6 Gatlin's First Set of Request for Production of Documents.

7 (7) Deposition transcript of Plaintiffs' expert Richard
8 Scheffler, Ph.D with attached exhibits.

9 (8) Deposition transcript of Person Most Knowledgeable from
10 Plaintiff AAID and ABOI/ID (J. Vincent Schuck) with attached
11 exhibits.

12 (9) Deposition transcript of Plaintiff's expert S. Lynn
13 Stokes, Ph. D and attached exhibits.

14 XII. FURTHER DISCOVERY OR MOTIONS

15 Pursuant to the court's Status Conference Order, all discovery
16 and law and motion was to have been conducted so as to be completed
17 as of the date of the Pretrial Conference. That order is
18 confirmed. The parties are free to do anything they desire
19 pursuant to informal agreement. However, any such agreement will
20 not be enforceable in this court.

21 XIII. STIPULATIONS

22 On June 9, 2010, the parties entered into a stipulation
23 regarding evidence admissible in the cross-motions for summary
24 judgment/adjudication (Docket no. 191). This stipulation is not
25 applicable to the trial of this case.

26 XIV. AMENDMENTS/DISMISSALS

27 There are no amendments to the pleadings, no dismissals, nor
28 any additions or substitutions of parties. Individual defendants

1 have been added and/or dropped from the lawsuit based on their
2 status as current members or staff of the Dental Board of
3 California.

4 XV. FURTHER TRIAL PREPARATION

5 A. Counsel are directed to Local Rule 285 regarding the
6 contents of trial briefs. Such briefs should be E-filed seven (7)
7 days prior to trial, i.e., October 6, 2010.

8 B. It is the duty of counsel to ensure that any deposition
9 which is to be used at trial has been lodged with the Clerk of the
10 Court pursuant to Local Rule 133(4)(j). The depositions shall be
11 lodged with the court clerk seven (7) calendar days prior to the
12 date of the trial. Counsel are cautioned that a failure to
13 discharge this duty may result in the court precluding use of the
14 deposition or imposition of such other sanctions as the court deems
15 appropriate.

16 C. The parties are ordered to E-file with the court and
17 exchange between themselves not later than one (1) week before the
18 trial a statement designating portions of depositions intended to
19 be offered or read into evidence (except for portions to be used
20 only for impeachment or rebuttal).

21 D. The parties are ordered to E-file with the court and
22 exchange between themselves not later than one (1) week before
23 trial the portions of Answers to Interrogatories which the
24 respective parties intend to offer or read into evidence at the
25 trial (except portions to be used only for impeachment or
26 rebuttal).

1 E. In limine motions shall be E-filed separately at least ten
2 (10) days prior to trial, i.e., October 4, 2010. Opposition briefs
3 shall be E-filed five (5) days prior to trial, i.e., October 8,
4 2010. No reply briefs may be filed.

5 XVI. SETTLEMENT NEGOTIATIONS

6 No formal settlement negotiations will be set by the Court.

7 XVII. AGREED STATEMENTS

8 See paragraph III, *supra*.

9 XVIII. SEPARATE TRIAL OF ISSUES

10 A separate trial of issues in this matter is neither feasible,
11 nor advised.

12 XIX. IMPARTIAL EXPERTS/LIMITATION OF EXPERTS

13 The Court need not appoint impartial expert witnesses, nor
14 limit the number of experts.

15 XX. ATTORNEYS' FEES

16 The matter of the award of attorneys' fees to prevailing
17 parties pursuant to statute will be handled by motion in accordance
18 with Local Rule 293.

19 XXI. MISCELLANEOUS

20 None.

21 XXII. ESTIMATE OF TRIAL TIME/TRIAL DATE

22 The parties estimate three (3) to four (4) court days for
23 trial. Trial will commence on October 13, 2010, at 9:00 a.m.

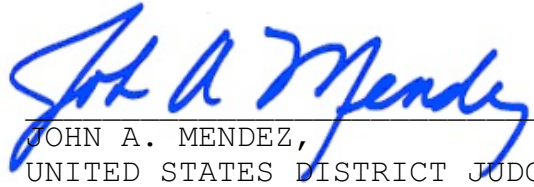
24 Counsel are to call Harry Vine, Courtroom Deputy, at
25 (916) 930-4091, one week prior to trial to ascertain the status of
26 the trial date.

XXIII. OBJECTIONS TO PRETRIAL ORDER

Each party is granted seven (7) days from the date of this Pretrial Order to object to it via ECF.

IT IS SO ORDERED.

DATED: September 13, 2010.



JOHN A. MENDEZ,
UNITED STATES DISTRICT JUDGE